

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
THE WASHINGTON WATER POWER COM-) **CASE NO. WWP-E-96-2**
PANY FOR APPROVAL OF A TEMPORARY)
TARIFF SCHEDULE 26, EXPERIMENTAL)
DRAFT ACCESS DELIVERY SERVICE.) **ORDER NO. 26615**
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On May 7, 1996, The Washington Water Power Company (Water Power; WWP; Company) filed an Application with the Idaho Public Utilities Commission (Commission) for approval of a proposed electric Schedule 26, Experimental Direct Access Delivery Service tariff. The proposed tariff is a program of limited duration (July 1, 1996-August 31, 1998) that will provide the Company's Schedule 25 extra large general service customers the opportunity to voluntarily transfer up to one-third of their load from Schedule 25 to Schedule 26, and to choose an alternate supplier to provide capacity and energy service for that portion of their load. Water Power reports that it has 11 Idaho industrial customers eligible for the experiment. These customers have loads ranging from 1.3 to 7.8 average megawatts (aMW), and a total load of 33 aMW. This represents approximately 14 percent of Water Power's Idaho retail electric load.

As proposed, the Schedule 26 tariff would not affect the rates for other customer classes during or after the experimental period (July 1, 1996 B August 31, 1998). The Company is not requesting any special accounting treatment associated with the proposed tariff. During the experimental period, the Company is proposing to absorb all the lost margin associated with loads being served on Schedule 26. Following the experimental period, the Company will provide an evaluation report to the Commission.

On May 24, 1996, Water Power filed an amendment to its Application in Case No. WWP-E-96-2, in which it proposed changes to Schedule 26. Schedule 26, as amended, includes the following major elements:

- \$ Effective dates: July 1, 1996 through August 31, 1998
- \$ 60 day prior written notice requirement to initiate/terminate service
- \$ Minimum one-year service term
- \$ Customer can change supplier as often as monthly, if desired

\$ Termination of Schedule 26 service ends eligibility for remainder of experimental period

\$ Capacity and energy amounts may not exceed one-third of customers average peak demand and total energy as billed under Schedule 26 during the period January B December 1995. Total capacity eligible for Schedule 26 is to be rounded to the nearest whole MW (all customers presently served under Schedule 25 will be able to purchase at least one MW of capacity from an alternate supplier under Schedule 26).

\$ Capacity and energy amounts may be changed after 12 months of service

\$ Scheduling and delivery information, including load shape must be specified

\$ Amount of energy and capacity delivered by alternative supplier would be deemed Afirst through the meter@for monthly billing purposes

\$ WWP to provide all ancillary services necessary to insure uninterrupted service to customer (incl. scheduling, balancing, load following, and generating reserves)

\$ Pricing and termination provisions re: nondelivery of contractual capacity and energy by alternate supplier. Charges for energy and capacity supplied by WWP when alternate supplies are not delivered will be \$2 per kW for capacity, plus WWP's incremental energy cost (based on non-firm purchases and sales), plus the Schedule 26 rates for kWh.

\$ Schedule 26 rates subject to temporary Power Cost Adjustments (PCA) Schedule 66 and experimental DSM rider adjustment Schedule 91

Water Power is proposing a Schedule 26 tariff rate of 1.3844/kWh. This rate provides the customer with transmission, distribution, A&G, scheduling, balancing, load following and generating reserves. These costs and services will be referred to by the Company as Adelivery costs@and Adelivery services.@ The Company's filing details the derivative components of the Schedule 26 rate. Per Company calculation, average Schedule 25 customers who take service under the Schedule 26 tariff will reduce their power bills to the extent that they can purchase capacity and energy from an alternate supplier for less than 1.5464/kWh.

On May 22, 1996, the Commission issued Notices of Application and Modified Procedure in Case No. WWP-E-96-2. Although the Company's proposal is limited to its Schedule 25 industrial customers, the Commission solicited comments on the Aperceived reasonableness and/or value of fashioning an experimental program or market test for other customer classes.@As established in its Notice, the deadline for filing written comments with respect to the Application and the Commission's use of Modified Procedure was June 18, 1996. Timely comments were received from Idaho Power Company, Potlatch Corporation and Commission Staff. On June 27, 1996, Water Power filed a response. The filed comments can be summarized as follows:

Idaho Power Company

Idaho Power contends that there are public policy issues presented in Water Power's Schedule 26 tariff that the Commission must address. Specifically Idaho Power identifies the following issues:

1. Must an alternate supplier such as Idaho Power obtain a Certificate of Convenience and Necessity to serve Water Power's customers under Schedule 26?

Idaho Power contends that unless otherwise specifically excepted, suppliers of electric service at retail in Idaho must comply with Idaho Code, Title 61, including the certificate requirements set out in *Idaho Code* 61-526-528, and the *Electric Suppliers Stabilization Act@Idaho Code* 61-332 *et seq.*

2. Are the rates and charges to be imposed by an alternate supplier subject to Commission review and approval?

Idaho Power questions whether Idaho Power or a municipality or cooperative can be required to submit rates, terms and conditions for Commission review.

3. Does Schedule 26 require a change in public utility law before it can be implemented?

Idaho Power Company contends that Schedule 26 represents a significant departure from a long-standing and expressly articulated state policy of replacing competition with regulation of the utility industry; and suggests that without a prior change in Title 61 Water Power may be subject to state and federal anti-trust laws. Citing a recent federal Ninth Circuit case (60 F.3d 1390 (9th Cir 1995)). In this case, Idaho Power states, it is the dominant competitor, Water Power, that has established the parameters under which it will allow competition in the affected area. Normally, Idaho Power contends, the only way that a private entity can place such restrictions on its competitors is if (1) such restrictions are expressly approved by the state agency (in this case the Commission), and (2) if the Commission actively supervises this activity of anti-competitive behavior.

Potlatch

Potlatch prefaces its remarks by stating that Water Power's Schedule 26 offering is a pro-active response to the new realities of the energy market and is in the public interest. The Company, its customers, and the Commission, Potlatch states further, will all benefit from *Hands on@experience* with alternative supply arrangements and the introduction of market conditions to the utility's service territory. That being

said, Potlatch then suggests, that evidentiary proceedings should be held to fully consider the Schedule 26 tariff and its implications. The experiment, Potlatch contends, is a case of first impression that will undoubtedly influence the public perception of the merits of customer choice, and may likely serve as a precedent for similar proposals by other Idaho utilities.

If evidentiary proceedings are scheduled, Potlatch intends to raise the following questions and issues regarding Schedule 26:

- a. Is the proposed Schedule 26 rate *just and reasonable* *reference Idaho Code 61-301*?

Potlatch points out that Water Power has not supplied evidence to support its cost of service calculation. The Commission should be wary, Potlatch contends, of the invitation to establish a precedent that suggests that power delivery charges are somehow exempt from the normal Commission requirement that all rates for services must be fully justified on an adequate evidentiary record.

- b. Is Schedule 26 workable for alternative suppliers and potential customers?

Water Power's Schedule 26 tariff, Potlatch speculates, was apparently designed without input from either marketers/alternative suppliers or affected customers. It is likely, Potlatch contends, that an evidentiary hearing would produce suggested changes that would improve the tariff suggesting by way of example that use of a single bundled rate for all delivery services may be a significant impediment to the successful implementation of Schedule 26.

- c. Does the Schedule 26 proposal target the appropriate classes?

Noting other experiments elsewhere around the country, Potlatch suggests that there is already a growing body of evidence indicating that retail competition is workable for industrial customers. The unresolved, and arguably more important question, Potlatch contends, is whether customer classes other than the industrial sector will benefit from power supply competition.

Potlatch urges the Commission to schedule evidentiary hearings and suggests a proposed process for completion within two months.

Commission Staff

Staff recommends that Water Power's Schedule 26 Application be approved with the following exceptions:

1. The Company should be required to submit quarterly reports throughout the experiment, and

2. The Company should be directed to continue examining retail wheeling experiment options for the residential and small commercial classes and report the results of its investigation to the Commission.

Based on its review and analysis, Staff identifies the following advantages associated with approval of Schedule 26:

- a. The Company, Schedule 25 customers, suppliers, the Commission Staff and the Commission will gain valuable experience with retail wheeling.
- b. Safety, reliability, and customer service should not be adversely affected by this experiment.
- c. The rates of non-participants will not be affected by the experiment.
- d. A substantial but limited amount of competitive choice will be available to Schedule 25 customers.
- e. No jurisdictional or class cross-subsidization will result from the experiment.
- f. All current Washington Water Power resources remain available to the Company for use in serving its jurisdictional customers.

The Schedule 26 rate, Staff contends, was developed in a manner consistent with the results of a cost-of-service study prepared by the Company and reviewed by Staff.

Water Power Response

Water Power in its response contends that Idaho Power and Potlatch raise no issues that should prevent the Commission from approving Schedule 26. The Company contends that evidentiary hearings are not necessary because of the limited term and experimental nature of the tariff. It was not the intent of the Company to establish a "perfect rate" only a rate that would encourage participation. Non-participating customers, it states, are held harmless. The risk to participants who are free to choose whether or not they participate is minimal. A single bundled rate rather than being an impediment, as suggested by Potlatch, the Company argues, significantly simplifies the experiment. Unbundling the rate at this point, the Company contends, would only serve to delay the experiment by initiating hearings likely to result in a contentious and protracted cost-of-service proceeding. Refuting Potlatch's contention that the Schedule 26 tariff was apparently designed without input from either marketers/alternative suppliers or affected customers, the Company reports that it has held both a supplier and a customer meeting to discuss and solicit input on the proposed tariff. Seventeen different suppliers and 18 out of the 26 eligible customers attended the meetings. The Company has received no feedback that the operating details and options developed are unworkable. The

Commission Staff, the Company states, has reviewed the documents and workpapers supporting Schedule 26, discussed them with the Company and is recommending approval.

Addressing Potlatch's suggestion that there is nothing new to learn from this experiment, Water Power points out that not just industrial customers are eligible. Of the eligible accounts, there are five universities, two hospitals, two governmental accounts, and one hotel complex. These customers, the Company states, have load requirements ranging from one to twenty-one average megawatts and load factors ranging from 30% to 80%. This is a fairly diverse group of customers, the Company contends, and the outcome of the experiment is not predictable.

As reflected in Water Power's response to Staff Production Requests (see Staff Comments attached), the Company maintains that it is simply not properly staffed or prepared at this time for the implementation of an expanded experiment for smaller customers.

Re: IPCo Concerns

In response to Idaho Power's question regarding the necessity of a Certificate for alternate suppliers, Water Power points out that Idaho statutes define "electrical corporations" as entities "owning, controlling, operating or managing an electric plant for compensation within the state." Under Schedule 26, the Company states, all of the facilities used to actually deliver electric energy to consumers would be owned, controlled, operated and managed by Water Power. The Company concludes that a Certificate is not required, nor is it necessary for the Commission to approve specific retail wheeling transactions.

Water Power further contends that the rates and charges of alternate suppliers should not be reviewed or approved by the Commission. The philosophical basis for retail wheeling, the Company states, is the premise that competition for customers will obviate the need for extensive rate regulation. The purpose of the Company's Schedule 26 tariff, is to promote competition, ergo. . . . Water Power contends that neither Idaho Power (or any other power marketers or providers) should be required to submit its rates, terms and conditions to the Commission for approval.

In a world of rate regulation, Water Power contends that neither regulated utilities nor customers have real choices. Water Power must serve its customer; the customer must buy from Water Power. Water Power's proposal to increase competition, the Company states, cannot be seen as having anti-trust implications merely because the experiment is not open to one and all from the outset. Water Power's experiment after all, it states, is designed to promote competition, not restrict it.

The Company suggests that Idaho Power's two-pronged test will be satisfied with Commission approval and active supervision and reporting requirements. The voluntary nature of participation in the offering, the Company states, the limited scope of the experiment, and the safeguard of Commission oversight should permit the experiment to go forward without a required change in statute.

Discussion

Water Power's May 7, 1996 Schedule 26 offering presents an opportunity for some Idaho customers to voluntarily transfer up to one-third of their electric load from Schedule 25 to Schedule 26, and to choose an alternate supplier. The Company requested an effective date July 1, 1996 which was suspended by Commission Order No. 26508. The proposed experiment is to extend to August 31, 1998. The Company anticipates that the experiment will provide it and the Commission with useful information as a national transition of the electric industry to a more competitive environment is debated.

The comments filed in this case were filed prior to this Commission's Order in the electric restructuring case. The Commission stayed deliberation in Water Power's Schedule 26 offering pending deliberations and decision in that electric restructuring case, Case No. GNR-E-96-1.

In our August 16, 1996, Order No. 26555, we identified our role in a transformation toward free market principles as one of continued effort to insure that all of Idaho's electric consumers continue to receive high quality service at reasonable rates. In our findings and analysis we determined that ~~the~~ deregulation or opening up of Idaho's distribution system is not feasible or desirable at this time.[@] We noted that customers of Idaho's regulated electric utilities, on the average, currently pay some of the lowest rates in the Nation. We observed that while with competition some of Idaho's larger customers due to their size and buying power may be able to obtain lower rates through contract sales with other energy suppliers, a majority of Idaho's ratepayers could see their electric rates increase. Also of stated concern to us is the possibility that a full or partial deregulation of the electric utility industry may result in the diminution of the quality of service. In our Order we concluded that ~~the~~ deregulation of Idaho's electric utilities, without some form of Commission oversight is not in the best interest of the general body of Idaho's electric utility ratepayers.[@]

In our electric restructuring Order we stated: ~~A~~large customers must not be allowed opportunities that are not available to small customers, under the guise of competition. Restructuring should be accomplished in a manner that allows the economic efficiencies of a competitive market to benefit all customers and not just a select few.[@]Although in our Notice of this case, we solicited comments on the ~~A~~perceived reasonableness and/or value of fashioning an

experimental program or market test for other customer classes, the Company's filing nevertheless remains unchanged, and it does not appear that fashioning a similar test for other classes can be developed without significant effort, time and resources. The Commission recognizes that the Company's proposed experiment, while limited in scope to just a segment of its customers, will require no subsidization from other customers.

In our electric restructuring Order, we noted that the Electric Supplier Stabilization Act (ESSA), *Idaho Code* ' 61-332 *et seq.*, provides public utilities with service area protection, and concluded that the Act must be reexamined before any form of deregulation can take place. We stated that the Act

- \$ Should be clarified to provide exclusivity only in the provision of distribution lines, not the supply of energy;
- \$ Should be revised to vest the Commission with the explicit authority to determine if, when and how deregulation of investor-owned electric utilities occurs;
- \$ Should be revised to outline a process for non-public utility suppliers, such as municipal corporations and cooperatives to consider customer choice of energy supplier;
- \$ Should perhaps be revised to vest the Commission with authority to establish geographical boundaries between the respective service territories of distribution providers. This, the Commission contends, would require that the Commission issue certificates to municipals and cooperatives for the limited purpose for defining their exclusive distribution areas.

We further noted that in proposing the foregoing changes to the Act we do not suggest that the existing authority of municipals to annex areas and acquire service territory or customers be altered. Furthermore, we are not suggesting that this Commission be given the authority to set rates for or regulate the operations of municipals or cooperatives. While we continue to believe that changes to the Act are necessary prior to any transition to a permanent industry restructuring, we believe that the instant Schedule 26 experiment may proceed in advance of those changes.

Having completed our electric restructuring analysis the Commission is now ready for continued consideration of the Company's Schedule 26 Application and the comments previously filed therein. We directed Staff to develop a regulatory framework for implementation and to

demonstrate how the Company's filing and the Commission's concerns regarding ESSA could be reconciled.

Staff Implementation Proposal

The Commission Staff believes that if otherwise acceptable, the nature of the Company's Schedule 26 offering dictates a light regulatory hand consisting of (1) a modified certificate requirement, in this case a simple registry of alternate energy providers and (2) regulatory oversight consisting simply of review of filed quarterly company reports. Staff contends that no greater regulatory structure is required for the following reasons:

- , eligible Schedule 25 customers remain customers of Water Power
- , participation is voluntary
- , Water Power under Schedule 26 continues to provide ancillary services
- , non participating customers are unaffected
- , Schedule 25 rates which are the fall back rates and the cap have already been determined to be fair, just and reasonable

The significance of the ESSA in relation to the Company's Schedule 26 offering, Staff contends, has been overstated. The stated purpose of the ESSA is ~~A~~to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the ~~A~~pirating of customers of another supplier, discourage duplication of electric facilities, and stabilize the territories and customers served with electricity by such suppliers. *Idaho Code* ' 61-332(B). As recognized by the Idaho Supreme Court, the purpose of ESSA was to vest district courts with jurisdiction to address service territory disputes between utilities and either cooperatives or municipalities not subject to the jurisdiction of the Commission. *See UP&L v. IPUC*, 112 Idaho 10, 730 P.2d 930 (1986). To the extent the ESSA was enacted to provide a framework for the resolution of disputes, Staff suggests that if there is no dispute or controversy there is no need to consider it. Furthermore the Schedule 26 offering within the context and duration of the experiment should be interpreted as generally providing the ~~A~~written consent to the alternate energy provider as allowed for by *Idaho Code* ' 61-332B. A requirement of formal written consent is seemingly necessary only in the instance of a co-op or municipal alternate energy provider.

The Staff proposes that alternate energy providers be required to provide the following information:

- ! name, address and form of business
- ! certified copy of Articles of Incorporation
- ! evidence of FERC registration and qualification (if required)
- ! evidence of qualification to do business in Idaho

! name and address of registered agent for service in Idaho.

The Certificate would be limited in scope and duration and restricted to providing energy to eligible WWP Schedule 25 customers. Recognizing that this is an experiment, the Commission, Staff suggests, would provide no assurance as to the ability of an alternate provider to follow through with its commitment. The Staff contends that there is an element of risk and a spectrum of reliability, which may be reflected in the lower price of the alternate energy and that remedies for alternate provider default, if any, should be contractual. The Commission, Staff cautions, should be clear that it is not a forum for resolution of such disputes.

The Staff proposed Certificate procedure does not require notice be provided. The registry, of course, will be available for public inspection and it is anticipated by Staff that customers desiring to participate in the program would refer to this list to develop contacts and proceed with individual negotiation. It is Staff's belief also that the Commission's role in this experiment should not be one of review and approval of alternate energy rates or contracts. Staff's review reveals that the Schedule 26 rates are adequate to recover the Company's costs of providing services. The Schedule 26 rates, Staff contends, are as much a part of the experiment as the contracts for alternate energy.

COMMISSION FINDINGS

The Commission has reviewed and considered the filings of record in Case No. WWP-E-96-2 including the filed comments of Idaho Power, Potlatch and Commission Staff, the responsive comments of Water Power and related correspondence. The Commission has also reviewed *Idaho Code* Title 61 including the Certificate requirements set out in *Idaho Code* ' ' 61-526-528 and the Electric Supplier Stabilization Act, *Idaho Code* ' 61-332 *et seq.* The Commission has further considered the proposed method of implementation prepared by Staff at our direction and outlined above, and has reviewed its electric restructuring Order No. 26555.

Idaho Power and Potlatch have raised serious issues that bear further analysis and resolution prior to adoption of any permanent restructuring plan. The proposal under consideration in this case is not intended to be a comprehensive or permanent restructuring plan. We are comfortable that our jurisdiction provides us with the requisite authority to

sanction, approve and oversee effectively the Company's proposed experiment. Accordingly, we do not find it necessary to develop further record to consider the issues raised. Reference IDAPA 31.01.01.204.

The perceived and identified problems and impediments to implementation, we find, are more applicable to a permanent *vis-à-vis* an experimental program. We find that the Company has suggested a program that protects all other customers from negative consequences. No cross-subsidization is required. While we still have serious concerns about the effects of deregulation on the customers in this state, we find no reason to deny eligible Schedule 25 customers the opportunity to voluntarily test the market and in so doing perhaps reduce their overall cost of power. We also recognize that they participate in the experiment with a safety net, i.e., Water Power's willingness to be a default provider of electricity and the Commission approved Tariff Schedule 25 rates. The risk to those participating is measured and easily calculable. We do not find it necessary to review or approve alternate provider rates or contracts. We hope that the experiment will prove to be of value to the Commission, the Company, participants and observers.

In the context of this experiment, we find the proposed Schedule 26 tariff rates to be fair, just and reasonable. Reference *Idaho Code* ' 61-301. Based on representations of the Company and Staff we find that the proposed Schedule 26 rate is sufficient to enable the Company to recover its related costs of service. It remains to be seen whether the rate will be otherwise attractive to Schedule 25 customers. We find the procedural mechanism, filing requirements and the nature of Commission oversight suggested by Staff and described above to be reasonable and adequate to satisfy the statutory requirements. We further find it reasonable to condition our approval of the Schedule 26 experiment on that method of implementation.

The Commission Secretary is directed to establish a Certificate registry for Schedule 26 alternate service providers under this case number. The Company is directed to file quarterly reports with the Commission relating and summarizing its continuing assessment and experience with the Schedule 26 experiment, including safety, reliability and customer service.

CONCLUSIONS OF LAW

The Commission has jurisdiction over The Washington Water Power Company, an electric utility, pursuant to the authority and jurisdiction granted under Title 61 of the *Idaho Code* and pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

ORDER

In consideration of the foregoing and as more particularly described and qualified above, **IT IS HEREBY ORDERED** and the Commission hereby approves Washington Water Power's proposed Schedule 26 tariff. The Commission Secretary is directed to establish a Certificate registry for Schedule 26 alternate service providers under this case number.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* ' 61-626.

**DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of September 1996.**

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

**Myrna J. Walters
Commission Secretary**

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